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SUPREME COURT OF THE UNITED STATES.

No. ~~518~~ 120. —

THE UNITED STATES, PLAINTIFFS,

vs.

JAMES TYNEN.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 6, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 318.

THE UNITED STATES, PLAINTIFFS,

vs.

JAMES TYNEN.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

1 In the circuit court of the United States for the district of California.

THE UNITED STATES
v.
JAMES TYNEN. } Indictment certified to the circuit court.

Be it remembered that at a stated term of the district court of the United States for the district of California, held at the city of San Francisco, within the district of California, on the first Monday of December, A. D. 1868, the annexed indictment was presented and filed in said court against the said defendant by the grand jurors of the district.

And be it further remembered that afterwards, on the 8th day of June, A. D. 1869, upon motion of the said defendant, the said indictment was remitted by order of said district court to the circuit court of the United States for the said district and filed therein, and thereafter, on the 16th day of July, A. D. 1869, by leave of the said circuit court, the said defendant, by his counsel, to the said indictment filed the annexed demurrer.

And be it further remembered that afterwards the said demurrer came on to be argued in the circuit court, and thereupon the questions occured—

2 First. Whether the said indictment does state or charge any offence against the laws of the United States.

Second. Whether it is necessary, under the 13th section of the act of Congress approved March 3d, 1813, entitled "An act for the regulation of seaman on board the public and private vessels of the United States," that the said indictment should aver that the certificate of citizenship, or the evidence of citizenship therein mentioned, was produced to the commander of a public vessel of the United States, or to a collector of the customs.

On which questions the opinions of the judges of the said circuit court were opposed.

Whereupon, on motion of the United States district attorney, it is ordered that the questions above stated, on which the said judges are opposed, be certified under the seal of the court to the Supreme Court of the United States to be finally decided.

Dated this 19th day of July, A. D. 1869.

S. J. FIELD,
Associate Justice of U. S. Sup. C't.
OGDEN HOFFMAN,
Dist. Judge.

3 (Endorsed:) Filed July 19th, 1869.
GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y.*

4 *Indictment.*

United States of America, United States district court, district of California.

At a stated term of the said court, begun and holden at the city and county of San Francisco, within and for the district of California, on the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight, the grand jurors of the United States of America, upon their oath, present, that James Tynen, late of the county of Santa Cruz, in the district of California, heretofore, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty eight, at Santa Cruz aforesaid, in the district aforesaid, and within the jurisdiction of this court, did willfully, falsely, feloniously, and fraudulently pass, utter, and use as true a certain false, forged, and counterfeited certificate and evidence of citizenship, partly written and partly printed upon paper, which said false, forged, and counterfeited certificate and evidence of citizenship purported to be issued out of the district court of the fourth judical district of the State of California, in and for the city and county of San Francisco, the
5 same being a court of record, having common-law jurisdiction, a seal, and clerk, and having jurisdiction and authority to admit aliens to become citizens of the United States, and purported to be a true and genuine copy of a record and act of the said court, to the effect that at a district court of the fourth judicial district held in and for the city and county of San Francisco, State of California, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, one James Tynen appeared in the said last-mentioned court, and applied to the same to be admitted to become a citizen of the United States of America, pursuant to the direction of the act of the Congress of the United States of America entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," approved the fourteenth day of April, in the year one thousand eight hundred and two, and to the direction of the said Congress subsequently passed on that subject, and that the said James Tynen having thereupon produced to said court satisfactory evidence, and made such declaration and renunciation as are by the said acts required, it was thereupon considered by the said court that the said James Tynen be admitted, and that he was accordingly
6 admitted, by the said court to be a citizen of the United States of America, and a certificate thereunder purporting to be made on

the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and signed by Washington Bartlett, clerk, by Oscar Weil, his lawfully authorized deputy clerk, (which said Washington Bartlett was, at the day of the date of said last-named certificate, county clerk of the city and county of San Francisco and ex officio clerk of said court, and duly authorized to authenticate and certify its records under his hand, in person, or by his deputy, and the seal of said court,) purporting to be a certificate under the seal of said court, to the effect that the aforesaid pretended copy of a record of said court was a true copy of the original certificate of citizenship of the said James Tynen remaining upon the records of said court, he the said James Tynen, at the time of the last-mentioned certificate and evidence of citizenship as true, well knowing the same to be false, forged, and counterfeited.

And the grand jurors say that they are, and hitherto have been, unable to obtain the possession, inspection, or control of said false, forged, and counterfeited certificate and evidence of citizenship; and that from their investigations they verily believe that the same has been de-
7 stroyed by the said James Tynen, or is under the control and in the possession of some person whose name is to the jurors aforesaid unknown, and that they are therefore unable to set forth the same according to its tenor in this indictment.

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the United States of America in such case made and provided.

DELOS LAKE,
U. S. Attorney.

(Endorsed:) Indictment. Passing, etc., of evidence of citizenship. A true bill.

J. CROWNINSHIELD, *Foreman.*

Witnesses: WASHINGTON BARTLETT.

Defendant arraigned February 26th, 1869, & pleads "not guilty."
Attest, &c., GEO. E. WHITNEY, *Clk*,
By A. D. GRIMWOOD, *D. C.*

Filed Feb'y 19th, 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

8 At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Friday, the 26th day of February, in the year of our Lord one thousand eight hundred and sixty-nine:.

Present, the Honorable Ogden Hoffman, judge.

THE UNITED STATES } No. 536.
vs.
JAMES TYNEN.

In this case, the defendant being personally present in open court, on motion of Delos Lake, esquire, attorney for the United States, the said defendant was duly arraigned upon the indictment on file against him, herein charging him with passing, &c., evidence of citizenship, to which indictment the said James Tynen pleaded "not guilty," which plea is hereby entered of record.

9 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Wednesday, the 3rd day of March, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Ogden Hoffman, judge.

THE UNITED STATES } No. 536.
vs.
JAMES TYNEN. }

The district attorney, Delos Lake, esquire, this day moved this case on for trial, and thereupon the defendant, who was personally present in open court, did, by James H. Hardy, esquire, his counsel, move that this case be certified to the circuit court of the United for the district of California for trial, which motion was duly argued and submitted to the court for its consideration and decision.

And thereupon the court took the same under advisement.

10 *Order remitting indictment to the circuit court of the United States for the district of Cal'a.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the eighth day of June, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Ogden Hoffman, judge.

THE UNITED STATES } No. 536.
vs.
JAMES TYNEN. }

In this case, the defendant's motion to remit the same to the circuit court of the United States for trial having been heretofore argued and submitted, and due consideration having been thereon had, it is by the court now here ordered that the indictment in this case be remitted to the next term of the circuit court of the United States for the district of California.

In obedience to the foregoing order I hereby remit to the circuit court of the United States for the district of California the indictment in the above-entitled case.

[SEAL.] Attest, &c., GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *Deputy Clerk.*

11 (Endorsed:) Filed in U. S. circuit court June 8th, A. D. 1869.
GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Deputy.*

12 At a stated term, to wit, the June term of the circuit court of the United States for the district of California, held at San Francisco on Monday, the 14th day of June, A. D. 1869, being the second Monday of June, held pursuant to statute:

Present, Hon. Stephen J. Field, circuit judge, and Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
vs.
JAMES TYNEN.

This cause, having been heretofore certified from the district court of the United States, came on this day for hearing on the demurrer to the indictment, F. M. Pixley, esq., U. S. dist. att'y, appearing on behalf of the United States, and James H. Hardy, esq., on behalf of the defendant, whereupon, the arguments of counsel having been heard, it is ordered that the same be submitted to the court for consideration and decision.

13 At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Wednesday, the 23d day of June, 1869:

Present, Hon. Stephen J. Field, judge.

THE UNITED STATES
vs.
JAMES TYNEN.

It appearing that this cause was argued and submitted to the court for consideration and decision, on the understanding that the cause was pending on demurrer, and it appearing, on an inspection of the record, that no demurrer has been filed in the cause, but that the same is pending in this court on the plea of "not guilty," ordered that the order of submission heretofore entered herein be vacated, and that the cause stand for trial.

14 At a stated term of the circuit court of the United States for the district of California, held pursuant to adjournment, at San Francisco, on Friday, the 16th day of July, 1869:

Present, Hon. Stephen J. Field, judge.

THE UNITED STATES
vs.
JAMES TYNEN.

On motion of Jas. H. Hardy, esq., attorney for defendant, and by consent of the United States dist. attorney, it is by the court ordered that defendant have leave to withdraw his plea of "not guilty," and interpose a demurrer to the indictment herein; whereupon, the case having been previously argued, it is ordered that the same be submitted to the court for consideration and decision.

15 *Demurrer to indictment.*

In the circuit court of the United States.

THE UNITED STATES
vs.
JAMES TYNEN.

The defendant, James Tynen, comes and demurs to the indictment herein, and assigns the following grounds of demurrer:

1st. The indictment does not state or charge any act or acts constituting a public offense.

2d. The acts charged in the indictment are not sufficient to constitute a public offense.

3d. The indictment does not state or charge any offense against the laws of the United States.

4th. The indictment does not state or charge any act or offense prohibited by the laws of the United States.

5th. The indictment does not state or charge any act or acts
16 constituting any offense against any law of the United States.

6th. The indictment does not state or charge any offense of which any court of the United States has jurisdiction.

7th. The indictment does not state or charge or show in any manner how the alleged false or forged evidence of naturalization was used, or for what purpose it was uttered or used.

8th. The indictment does not charge or show in any manner that the said evidence of naturalization was forged, passed, or uttered in violation of any law of the United States, or with intent to violate any law of the United States.

9th. The indictment does not state, charge, or show that the said evidence of naturalization was forged, uttered, passed, or used to accomplish or do any thing or purpose contemplated by the act of Con-
17 gress under which the indictment was found and presented, or for any other evil or unlawful purpose, or with intent to wrong or injure the United States, or any State, person, corporation, or association.

10th. The courts of the United States have not jurisdiction of the alleged offense.

Wherefore the defendant demands judgement, that he be hence dismissed without day, &c.

QUINT AND HARDY,
For Defendant.

(Endorsed:) Filed July 16, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y.*

Due service of a copy of the within demurrer admitted this 12th day of July, 1869.

FRANK M. PIXLEY,
U. S. Attorney for California.

18 At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Monday, July 19, 1869:

Present, Hon. Stephen J. Field, judge.

THE UNITED STATES
vs.
JAMES TYNEN.

This cause, having been heretofore argued and submitted on a demurrer to the indictment, the court this day filed the following certificate of opposition of opinion of the judges of the circuit court, and ordered that the same be spread upon the minutes, viz:

Be it remembered that a a stated term of the district court of the United States for the district of California, held at the city of San Francisco, within the district of California, on the first Monday of December, 1868, the annexed indictment was presented and filed in said court against the said defendant by the grand jurors of the district.

19 And be it further remembered that afterwards, on the 8th day of June, A. D. 1869, upon motion of the said defendant, the said indictment was remitted by order of the said district court to the circuit court of the United States for the said district, and filed therein; and thereafter, on the 16th day of July, A. D. 1869, by leave of the said circuit court, the said defendant, by his counsel, to the said indictment filed the annexed demurrer.

And be it further remembered that afterwards the said demurrer came on to be argued in the circuit court, and thereupon the questions occurred—

First. Whether the said indictment does state or charge any offence against the laws of the United States.

Second. Whether it is necessary, under the 13th section of the act of Congress approved March 3d, 1813, entitled "An act for the regulation of seaman on board the public and private vessels of the United States," that the said indictment should aver that the certificate of citizenship therein mentioned was produced to the commander of a public

20 vessel of the United States or to a collector of the customs.

On which questions the opinions of the judges of the said circuit court were opposed.

Whereupon, on motion of the United States district attorney, it is ordered that the questions above stated, on which the said judges are opposed, be certified, under the seal of the court, to the Supreme Court of the United States, to be finally decided.

Dated this 19th day of July, A. D. 1869.

S. J. FIELD,
Associate Justice of U. S. Sup. C't.
OGDEN HOFFMAN,
Dist. Judge.

And it is further ordered that further proceedings in all similar cases be stayed until the decision of the Supreme Court upon the questions stated.

21 UNITED STATES OF AMERICA,
District of California, ss:

I, George E. Whitney, clerk of the circuit court of the United States for the district of California, in the ninth circuit, hereby certify that the foregoing twenty written pages are a true copy of all papers on file, and of all records and minutes of proceedings in the cause therein entitled now being or appearing on the files or records of said circuit court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, in said district, this 23d day of November, A. D. 1869.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

(Indorsement on cover:) No. 318. The United States, plaintiffs, vs. James Tynen. California C. C. U. S.
Filed 6th December, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *by Indictment*,
vs.
JAMES TYNEN. } No. 120.

Certificate of division in opinion between the Judges of the Circuit Court of the United States for the District of California.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *by Indictment,*
vs.
JAMES TYNEN. } No. 120.

Certificate of division in opinion between the Judges of the Circuit Court of the United States for the District of California.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case is brought here upon a certificate of division in opinion between the judges of the circuit court of the United States for the district of California, on an indictment against the defendant, James Tynen, late of Santa Cruz county, California, drawn under the 13th section of the act of March 3, 1813, (2 Stat., 811.)

That section enacts: "That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, any certificate or evidence of citizenship referred to in this act; or shall pass, utter, or use as true any false, forged, or counterfeited certificate of citizenship, or shall make sale or

dispose of any certificate of citizenship to any person other than the person for whom it was originally issued, and to whom it may of right belong, every such person shall be deemed and adjudged guilty of felony; and on being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three nor more than five years, or be fined in a sum not less than five hundred dollars, nor more than one thousand dollars, at the discretion of the court taking cognizance thereof."

The indictment was originally filed in the district court of the United States for the district of California, and charges that theretofore, to wit, on the 17th of October, 1868, at Santa Cruz aforesaid, the defendant did "wilfully, falsely, feloniously, and fraudulently pass, utter, and use as true, a certain false, forged, and counterfeited certificate and evidence of citizenship, partly written and partly printed upon paper, which said false, forged, and counterfeited certificate and evidence of citizenship purported to be issued out of the district court of the fourth judicial district of the State of California, the same being a court of record, having common-law jurisdiction, a seal, and clerk, and having jurisdiction and authority to admit aliens to become citizens of the United States, and purported to be a true and genuine copy of a record and act of the said court, to the effect that, at a district court of the fourth judicial district, held in and for the city and county of San Francisco, State of California, on the 17th day of October, A. D. 1868, one

James Tynen appeared in the said last mentioned court, and applied to the same to be admitted to become a citizen of the United States of America, pursuant to the direction of the act of the Congress of the United States of America entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," approved the 14th day of April, 1802, and to the direction of the said Congress subsequently passed on that subject; and that the said James Tynen, having thereupon produced to said court satisfactory evidence, and made such declaration and renunciation as are by the said acts required, it was thereupon considered by the said court that the said James Tynen be admitted, and that he was accordingly admitted by the said court, to be a citizen of the United States of America, and a certificate thereunder, purporting to be made on the 17th day of October, A. D. 1868, and signed by Washington Bartlett, clerk, by Oscar Weil, his lawfully authorized deputy clerk, (which said Washington Bartlett was, at the day of the date of said last named certificate, county clerk of the city and county of San Francisco, and *ex officio* clerk of said court, and duly authorized to authenticate and certify its records under his hand, in person or by his deputy, and the seal of said court,) purporting to be a certificate under the seal of said court, to the effect that the aforesaid pretended copy of a record of said court was a true copy of the original certificate of citizenship of the said James Tynen remaining upon the records of said court,

he, the said James Tynen, at the time of the last-mentioned certificate and evidence of citizenship as true, well knowing the same to be false, forged, and counterfeited," &c., against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

The defendant pleaded not guilty, and afterwards, on motion of his counsel, the indictment was remitted into the circuit court, where, by consent of the attorney for the United States, he was allowed to withdraw his plea and put in a demurrer.

Upon the argument of the demurrer the following questions occurred:

"1st. Whether the said indictment does state or charge any offence against the laws of the United States."

"2d. Whether it is necessary, under the 13th section of the act of Congress approved March 3, 1813, entitled 'An act for the regulation of seamen on board the public and private vessels of the United States,' that the said indictment should aver that the certificate of citizenship therein mentioned was produced to the commander of a public vessel of the United States or to a collector of the customs."

On which questions the opinions of the judges were opposed.

ARGUMENT.

I.

The 13th section of the act of 1813, under which the defendant was indicted, declares and punishes several distinct offences, namely:

1. Falsely making, forging, or counterfeiting, or causing or procuring to be falsely made, forged, or counterfeited, *any certificate or evidence of citizenship referred to in that act.*

2. Passing, uttering, or using as true *any false, forged, or counterfeited certificate of citizenship.*

3. Making sale or disposing of *any certificate of citizenship* to any person other than the person for whom it was originally issued and to whom it may of right belong.

The indictment charges the second of the offences here enumerated, and in so doing employs the very words of the statute, viz: That the defendant did wilfully, falsely, feloniously, and fraudulently, "*pass, utter, and use as true* a certain *false, forged, and counterfeited certificate* and evidence *of citizenship*," &c.

The doctrine is well settled, that where an offence is purely statutory, it is as a general rule sufficient if the indictment describes the offence in the language of the statute.

United States *vs.* Gooding, 12 Wheat., 474.

1 Whart. Crim. Law, § 364.

1 Bishop Crim. Proc., § 359.

The rule applies to indictments upon any statute which is of itself complete, and which, by creating, defines the offence.

State *vs.* Cook, 38 Vermont, 439.

It will be observed, in this case, that the *particular purpose* for which the forged or counterfeited certificate is passed or uttered is not made by the statute an ingredient of the offence, and therefore need not be alleged. It is the act of *passing* or *uttering* the same *as genuine* that constitutes the offence.

So neither does the statute specify any *particular intent* as an element of the offence; it makes the *act* the *crime*, and infers a criminal intent from the act itself. The general rule as to alleging criminal intent has been thus stated: In all cases where a statute creates an offence, and mentions some intent as an element therein, the indictment must follow the statute in this particular, and specify the intent. On the other hand, if the statute is silent concerning the intent, there need be no intent alleged in the indictment.

Bishop Crim. Proc., § 280.

But even if a guilty or fraudulent intention, concurring with the act, should also be averred, this requirement is fully satisfied by the charge in the indictment that the defendant did "*wilfully, falsely, feloniously, and fraudulently, pass, utter*," &c. It has been held that in an indictment for forgery it is not necessary to allege an intention to defraud, where the statute, upon which such indictment is founded, does not con-

tain these terms, and that such intention is sufficiently embraced and set forth in the words "falsely and fraudulently."

State *vs.* Calvin, R. M. Charlton, 151.

The terms "falsely and fraudulently," (it was observed in the case just cited,) involve every idea of deceit, whether practiced upon an individual or body politic, and supersede the necessity of more fully designating it.

It is plain, then, that if the section aforesaid is of general application, and the certificate described in the indictment is such as is mentioned in that section, the indictment does state or charge an offence against the laws of the United States.

II.

That the section referred to was intended to be of general application, and not confined in its operation to a particular class of persons or cases mentioned in the act of which it is a part, is shown by the history of this legislation, which is briefly as follows:

In his message of November 4, 1812, Mr. Madison stated to Congress, that after the declaration of war, he had conveyed to the British Government certain terms on which the war might be arrested, without awaiting the delays of a formal pacification, and among them was the condition that there should be an immediate discharge of American seamen from British ships, and a cessation of impressment from American ships, with an understanding that "an exclusion of the seamen of each

nation from the ships of the other should be stipulated." (Annals of Congress, 1812–'13, p. 13.) On the 20th of January, 1813, Mr. Grundy, from the Committee on Foreign Relations of the House, made a report on the part of the President's Message that related to foreign affairs, which concluded with recommending "A Bill for the regulation of seamen on board the public vessels and in the merchant service of the United States." (*Ibid.*, pp. 932, 937.)

The bill as originally reported contained ten sections. The 10th section of the bill was in the words of the the 12th section of the act. But the 13th section of the act was not in the bill as reported. It was introduced afterwards by way of amendment.

The bill appears to have been brought forward partly as a pacificatory or conciliatory measure. Thus, it is spoken of by John Adams, in a letter dated February 23, 1813, addressed to Mr. Monroe, then Secretary of State, as "a very *conciliatory* bill for the regulation of seamen." (Life and Works of John Adams, vol. 10, p. 32.) It also had another object in view, of a political character, namely, to unite all parties in the country against Great Britain, by placing the United States in the right and Great Britain, in the event of her refusing to reciprocate the terms proposed by the act, in the wrong. (4 Benton's Debates, pp. 668, 669.) Another object intended was to change the form of protection given to American seamen by the act of May 28, 1796, (1 Stat., 477,) and by means of a *general* en-

actment for the punishment of forgery and falsification, in connection with naturalization certificates and records, to remedy the gross evils and frauds which had grown up under that act. This could only be accomplished by adding to the bill as reported a general provision which should strike at the whole system of forging evidences of naturalization for any purpose or by any person. The act of 1796 provided that collectors of customs might grant certificates of citizenship to seamen. The form of the certificate is given in the act, but the character of proof required to be adduced or taken is not prescribed. The evils which had sprung up under that system were referred to in Congress as, in some measure, affording a justification to Great Britain in her course with reference to impressment. (4 Benton's Debates, 625, 669.)

In view of these facts, Congress determined, by the act of 1813, among other things—

1. To prohibit the employment on board of the public and private vessels of the United States of citizens or subjects of any foreign nation that should, by treaty or convention with the United States, prohibit the employment on board of her public and private vessels of native citizens of the United States who may not have become citizens or subjects of such foreign nation.

2. To require all naturalized citizens, proposing to be employed on American vessels, to produce to the collectors of customs (or commanders of public vessels,

as the case might be) certificates of citizenship issued by the courts before whom they were naturalized.

3. To amend the naturalization laws so as to require five years' uninterrupted residence in all cases, not merely as regards seamen, but all persons.

4. To provide generally for punishing the forging of certificates or evidences of citizenship purporting to be issued by the courts as aforesaid, as also the utfering of the same, &c., by any person for any purpose or with any intent.

The recent act of June 28, 1864, (13 Stat., 201,) has repealed that part of the act of 1813 which was directed to the first of the objects just mentioned, *i. e.*, so much thereof as made it unlawful to employ on board any of the public or private vessels of the United States any person or persons, except citizens of the United States, or persons of color, natives of the United States; with a proviso, however, that officers of American vessels shall in all cases be citizens of the United States.

The act of 1864 may be said to repeal the 1st, 6th, 7th, 8th, and 10th sections of the act of 1813, inasmuch as all those sections directly relate to the prohibition against the employment of persons who are not citizens or natives of the United States. The 2d section of the act of 1813 does not in terms relate to the employment of the last-mentioned class of persons, but rather to the employment of *naturalized citizens;* yet, as the design of the act of 1864 was to remove all

restrictions, founded upon citizenship, with respect to the employment of persons on board of American vessels, except as to the officers of such vessels, it must, consistently with this purpose, be taken to extend to that section also, and to impliedly repeal the same so far as it prohibits the employment of any naturalized citizen on board any American vessel, not in the capacity of an officer thereof, unless he produces his certificate of naturalization; in other words, it abolishes the requirement for the production of such certificate to the collector or commander, as formerly. See also 2 Parsons on Ship. and Adm., p. 33, where it is observed, in reference to this provision, that "in 1864 it was repealed."

Thus, the only permanent provisions of the act of 1813, touching the objects above enumerated, that now remain, are those which relate to naturalization and those which punish the forging, uttering, &c., of certificates of citizenship; all of which are comprised in the 12th and 13th sections of the act. With regard to these provisions, it would seem that, as the 12th section of the act is a general law, and was intended to apply to all foreigners, (see *ex parte* Paul, 7 Hill, 56; in the matter of Hawley, 1 Daily, 531; 2 Kent Com., 7th ed., p. 28, note *a;* Conkling's Treatise, 2d ed., 498,) so the 13th section is a general law, and was intended to cover all cases of forging certificates or evidences of naturalization, and uttering or passing such forged documents, whether the acts are committed by landsmen or seamen,

or whether the certificates are given or sold to landsmen or seamen, or are used, or intended to be used, by one or the other class of persons.

III.

This view of the effect and operation of the 13th section of the act of 1813 coincides with the opinion of the court in the case of The United States *vs.* Randolph, tried before the circuit court of the United States for the western district of Pennsylvania, at its May term, 1853; which opinion was delivered by Judge Irwin. (See Pittsburg Legal Journal, June 4, 1853.) The defendant in that case was indicted on precisely the same charge as the defendant in this case.

"The indictment," observes the court in the case just cited, "it is supposed, cannot be sustained by the 13th section of the act, for that, by looking to its general scope, subject-matter, and title, it must refer to seamen situated as the first eleven sections refer to, and to no other persons; and that, although the words 'if *any* person shall falsely make, forge,' &c., might be broad enough to include others than seamen, if standing unconnected with the particular subject of legislation, yet, if connected with that subject, they should be so construed as to harmonize with it, without enlarging their meaning beyond the obvious provisions of the act; and that to effect this object, nothing more is necessary than to introduce the word 'such' after the word 'any,' at the beginning of the section; and that the word

'such' was probably accidentally omitted in framing the act.

"If this were the only difficulty, the argument, if not conclusive, would be entitled to great weight. But it is proper to give effect to all the material words of one section of a statute, if they can be reconciled with or have an obvious reference to the words or enactment of another section; and whenever this can consistently be done, we are not at liberty to presume that Congress intended to qualify or restrain the only meaning which the words, employed naturally and grammatically, import. Following this rule, and connecting the 12th and 13th sections of the act, it will be apparent that the words of the 13th section, 'if any person shall make, forge,' &c., are intended to be general in their operation, and not confined to seamen employed in the public and private vessels of the United States.

"The act of 1813 is the only one, purporting to be general in its features, which requires a continued residence of five years preceding admission to citizenship—a provision, it may be assumed, introduced as the best evidence of *bona fide* expatriation, and probably not admitting, by construction, a temporary absence during the five years out of the territory of the United States, which construction would include all persons besides seamen who left the territory upon business for a temporary period. But to show that any temporary absence, for any purpose, during the five years, would disqualify from naturalization, the 12th section further

provides that the alien must have resided in the United States, '*without being at any time during the said five years out of the territory of the United States.*' It is not improbable that, to get rid of the injury and inconvenience which a general application of the words in *italics* might produce, a disposition was felt and perhaps judicially sanctioned, to limit the act of 1813 to seaman alone; and if so, and the intention of Congress had not thereby been misinterpreted, there would not have been any necessity for any further legislation on the subject. But to show that such could not have been the intention of Congress, the act of the 26th of June, 1848, was passed, (9 Stat., 240,) by which the words in *italics* were repealed, so that after that time there could be no foundation for an opinion that the 12th section embraced only a particular class of persons. Connecting it, then, with the 13th section, we cannot avoid the conclusion that the penalties presented in the latter apply to the indictment before us."

IV.

The second and third clauses of section 13 of the act of 1813 punish, respectively, the uttering or passing of *any* "false, forged, or counterfeited certificate of citizenship," and the selling or disposing of *any* "certificate of citizenship," &c.; and it will be observed, that the words "referred to in this act," used in connection with the first clause of that section, are omitted in the second and third clauses, though, perhaps, the lat-

ter were not designed to have any broader application than the former.

Now, the "certificate of citizenship" here mentioned is not to be understood as any special or peculiar certificate given to seamen, (such, for instance, as the certificates of protection for American seamen, authorized to be issued by collectors of customs, under the 4th section of the act of May 28, 1796, 1 Stat., 477,) but the ordinary document known as the certificate of naturalization, given upon request to every person who is naturalized by the courts, to attest his citizrnship. Certificates of this sort were, by the 3d section of the act of June 18, 1798, (1 Stat., 567,) required to be made and transmitted within a certain period to the Secretary of State by the clerks of courts in all cases of naturalization. The act of April 14, 1802, (2 Stat., 153,) which repealed the act of 1798, omitted this provision, but required a record of the naturalization proceedings to be kept by the clerk. Under both these statutes, the practice was, doubtless, general, at the period of the passage of the act of 1813, to issue a certified copy of the record of the judgment or act of naturalization to the person naturalized, at his request; and this certified copy is plainly what is referred to in the 2d section of the act of 1813, by the words, "a certified copy of the act by which he shall have been naturalized," &c.

To guard against frauds in naturalization, the statute makes it an offence, not only to forge or falsify a certificate of this character, but to utter or pass as true,

in any case, such forged certificate; thus levelling the penalties of the law at the general crime, the frequency of which, it was probably thought, would be much increased by the stringent requirements as to residence in the 12th section of the act. The reference in the 13th section to the certificate mentioned in the 2d section was not intended to describe, define, or narrow the offence, but as a description of the certificate which it was made a crime to forge or falsify, or to utter or pass as true when forged.

Such a certificate may have been obtained by a person not a seaman, and not intending to be one, to be used for quite another purpose than to procure employment on board of an American vessel. It was capable of serving many purposes. But, by the terms of the statute, as has already been remarked, the *particular purpose* for which the forged or counterfeited certificate has been passed or uttered is not an essential element of the offence, and, therefore, need not be averred. So that it would seem to be sufficient to set forth the fact of passing or uttering the same as genuine, as is done in the indictment in this case, without stating that the forged document was produced to the collector or commander; a circumstance quite immaterial in any case, as the requirement imposed by the 2d section of the act of 1813, respecting the production of certificates of citizenship to those officers, has been virtually taken away by the act of June 28, 1864, already referred to.

V.

The body of the act of 1813 shows that its title is singularly narrow, and that, besides the "regulation of seamen on board the public and private vessels of the United States," it introduced important additions to the pre-existing naturalization laws. It appears that, after the bill had passed, it was *ordered* that the title be, &c. (Annals of Congress, 1812–'13, p. 1055.) But the title of an act furnishes little aid in the construction of its provisions.

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And a statute is good for any number of different subjects. So it may contain provisions of a private nature and provisions of a public character. It may be two laws under one enacting clause.

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Congress has evidently treated this statute of 1813 as one making ample provision in its 13th section for the prevention of frauds in connection with naturalization papers, and the aim of the statute should not be defeated by a forced and over-strict construction. The rules for the construction of penal statutes are well presented in United States *vs.* Hartwell, 6 Wall., 396.

VI.

It is submitted that the instrument forged, though not set out in the indictment, is described with sufficient particularity.

Referring to the general rule laid down in 2 East P. C., 975, that "it is essentially necessary to an indictment for forgery, that the instrument alleged to be forged should be set forth in words and figures," the court, in Commonwealth *vs.* Houghton, 8 Mass., 110, observes: "But there are cases which will form just and necessary exceptions to this rule, as where the forged instrument has been destroyed by the prisoner, or has remained in his possession, and perhaps in other cases, where the instrument cannot be produced, and there are no laches on the part of the Government or prosecutor. But in every such instance, that the exception may be admitted, it must appear in the indictment what is the cause of the non-description of the instrument."

The indictment in this case shows upon its face why the forged certificate is not set forth therein, but only the purport given.

See also People *vs.* Kingsley, 2 Cow., 522.

A. T. AKERMAN,
Attorney General.

~~C. H. HILL~~,
~~*Asst. Attorney General.*~~

B. H. Bristow
Sol. Gen'l.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *by indictment,*
vs.
JAMES TYNEN. } No. 318.

Certificate of division in opinion between the Judges of the Circuit Court of the United States for the District of California.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

STATEMENT.

This case is brought here upon a certificate of division in opinion between the judges of the circuit court of the United States for the district of California, on an indictment against the defendant, James Tynen, late of Santa Cruz county, California, drawn under the 13th section of the act of March 3, 1813, (2 Stat., 811.)

That section enacts: "That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, any certificate or evidence of citizenship referred to in this act; or shall pass, utter, or use as true any false, forged, or counterfeited certificate of citizenship, or shall make sale or

dispose of any certificate of citizenship to any person other than the person for whom it was originally issued, and to whom it may of right belong, every such person shall be deemed and adjudged guilty of felony; and on being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labor for a period not less than three or more than five years, or be fined in a sum not less that five hundred dollars, nor more than one thousand dollars, at the discretion of the court taking cognizance thereof."

The indictment was originally filed in the district court of the United States for the district of California, and charges that theretofore, to wit, on the 17th of October, 1868, at Santa Cruz aforesaid, the defendant did "willfully, falsely, feloniously, and fraudulently pass, utter, and use as true, a certain false, forged, and counterfeited certificate and evidence of citizenship, partly written and partly printed upon paper, which said false, forged, and counterfeited certificate and evidence of citizenship purported to be issued out of the district court of the fourth judicial district of the State of California, the same being a court of record, having common law jurisdiction, a seal, and clerk, and having jurisdiction and authority to admit aliens to become citizens of the United States, and purported to be a true and genuine copy of a record and act of the said court, to the effect that, at a district court of the fourth judicial district, held in and for the city and county of San Francisco, State of California, on the 17th day of October, A. D. 1868, one

James Tynen appeared in the said last mentioned court, and applied to the same to be admitted to become a citizen of the United States of America, pursuant to the direction of the act of the Congress of the United States of America entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," approved the 14th day of April, 1802, and to the direction of the said Congress subsequently passed on that subject; and that the said James Tynen, having thereupon produced to said court satisfactory evidence, and made such declaration and renunciation as are by the said acts required, it was thereupon considered by the said court that the said James Tynen be admitted, and that he was accordingly admitted by the said court, to be a citizen of the United States of America, and a certificate thereunder, purporting to be made on the 17th day of October, A. D., 1868, and signed by Washington Bartlett, clerk, by Oscar Weil, his lawfully authorized deputy clerk, (which said Washington Bartlett was, at the day of the date of said last named certificate, county clerk of the city and county of San Francisco, and *ex officio* clerk of said court, and duly authorized to authenticate and certify its records under his hand, in person or by his deputy, and the seal of said court,) purporting to be a certificate under the seal of said court, to the effect that the aforesaid pretended copy of a record of said court was a true copy of the original certificate of citizenship of the said James Tynen remaining upon the records of said court, he the

said James Tynen, at the time of the last-mentioned certificate and evidence of citizenship as true, well knowing the same to be false, forged, and counterfeited," &c., against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

The defendant pleaded not guilty, and afterwards, on motion of his counsel, the indictment was remitted into the circuit court, where, by consent of the attorney for the United States, he was allowed to withdraw his plea and put in a demurrer.

Upon the argument of the demurrer, the following questions occurred:

"1st. Whether the said indictment does state or charge any offence against the laws of the United States."

"2d. Whether it is necessary, under the 13th section of the act of Congress, approved March 3, 1813, entitled 'An act for the regulation of seamen on board the public and private vessels of the United States,' that the said indictment should aver that the certificate of citizenship therein mentioned was produced to the commander of a public vessel of the United States or to a collector of the customs."

On which questions the opinions of the judges were opposed.

ARGUMENT.

I.

The 13th section of the act of 1813, under which the defendant was indicted, declares and punishes several distinct offences, namely:

1. Falsely making, forging, or counterfeiting, or causing or procuring to be falsely made, forged, or counterfeited, *any certificate or evidence of citizenship referred to in that act.*

2. Passing, uttering, or using as true *any false, forged, or counterfeited certificate of citizenship.*

3. Making sale or disposing of *any certificate of citizenship* to any person other than the person for whom it was originally issued and to whom it may of right belong.

The indictment charges the second of the offences here enumerated, and in so doing employs the very words of the statute, viz: That the defendant did wilfully and feloniously "*pass, utter, and use as true* a certain *false, forged, and counterfeited certificate* and evidence *of citizenship*," &c. It is plain, then, that if the section aforesaid is of general application, and the certificate described in the indictment is such as is mentioned in that section, an offence against the laws of the United States has been sufficiently set forth.

II.

That the section referred to was intended to be of general application, and not confined in its operation to

a particular class of persons or cases mentioned in the act of which it is a part, is shown by the history of this legislation, which is briefly as follows:

In his message of November 4, 1812, Mr. Madison stated to Congress, that after the declaration of war, he had conveyed to the British Government certain terms on which the war might be arrested, without awaiting the delays of a formal pacification, and among them was the condition that there should be an immediate discharge of American seamen from British ships, and a cessation of impressment from American ships, with an understanding that "an exclusion of the seamen of each nation from the ships of the other should be stipulated." (Annals of Congress, 1812–'13, p. 13.) On the 20th of January, 1813, Mr. Grundy, from the Committee on Foreign Relations of the House, made a report on the part of the President's Message that related to foreign affairs, which concluded with recommending a "Bill for the regulation of seamen on board the public vessels and in the merchant service of the United States." (*Ibid.*, pp. 932, 937.)

The bill as originally reported contained ten sections. The 10th section of the bill was in the words of the the 12th section of the act. But the 13th section of the act was not in the bill as reported. It was introduced afterwards by way of amendment.

The bill appears to have been brought forward partly as a pacificatory or conciliatory measure. Thus, it is spoken of by John Adams, in a letter dated February

23, 1813, addressed to Mr. Monroe, then Secretary of State, as "a very *conciliatory* bill for the regulation of seamen." (Life and Works of John Adams, vol. 10, p. 32.) It also had another object in view, of a political character, namely, to unite all parties in the country against Great Britain, by placing the United States in the right and Great Britain, in the event of her refusing to reciprocate the terms proposed by the act, in the wrong. (4 Benton's Debates, pp. 668, 669.) Another object intended was to change the form of protection given to American seamen by the act of May 28, 1796, (1 Stat., 477,) and by means of a *general* enactment for the punishment of forgery and falsification, in connection with naturalization certificates and records, to remedy the gross evils and frauds which had grown up under that act. This could only be accomplished by adding to the bill as reported a general provision which should strike at the whole system of forging evidences of naturalization for any purpose or by any person. The act of 1796 provided that collectors of customs might grant certificates of citizenship to seamen. The form of the certificate is given in the act, but the character of proof required to be adduced or taken is not prescribed. The evils which had sprung up under that system were referred to in Congress as, in some measure, affording a justification to Great Britain in her course with reference to impressment. (4 Benton's Debates, 625, 669.)

In view of these facts, Congress determined, by the act of 1813, among other things—

1. To prohibit the employment on board of the public and private vessels of the United States of citizens or subjects of any foreign nation that should, by treaty or convention with the United States, prohibit the employment on board of her public and private vessels of native citizens of the United States who may not have become citizens or subjects of such foreign nation.

2. To require all naturalized citizens, proposing to be employed on American vessels, to produce to the collectors of customs (or commanders of public vessels, as the case might be) certificates of citizenship issued by the courts before whom they were naturalized.

3. To amend the naturalization laws so as to require five years uninterrupted residence in all cases, not merely as regards seamen, but all persons.

4. To provide generally for punishing the forging of certificates or evidences of citizenship purporting to be issued by the courts as aforesaid, as also the uttering of the same, &c., by any person for any purpose or with any intent.

The recent act of June 28, 1864, (13 Stat., 201,) has repealed that part of the act of 1813 which was directed to the first of the objects just mentioned, *i. e.*, so much thereof as made it unlawful to employ on board any of the public or private vessels of the United States any person or persons, except citizens of the United States, or persons of color, natives of the United

States; with a proviso, however, that officers of American vessels shall in all cases be citizens of the United States.

The act of 1864 may be said to repeal the 1st, 6th, 7th, 8th, and 10th sections of the act of 1813, inasmuch as all those sections directly relate to the prohibition against the employment of persons who are not citizens or natives of the United States. The 2d section of the act of 1813 does not, in terms, relate to the employment of the last-mentioned class of persons, but rather to the employment of *naturalized citizens;* yet, as the design of the act of 1864 was to remove all restrictions, founded upon citizenship, with respect to the employment of persons on board of American vessels, except as to the officers of such vessels, it must, consistently with this purpose, be taken to extend to that section also, and to impliedly repeal the same so far as it prohibits the employment of any naturalized citizen on board any American vessel, not in the capacity of an officer thereof, unless he produces his certificate of naturalization; in other words, it abolishes the requirement for the production of such certificate to the collector or commander, as formerly.

Thus, the only permanent provisions of the act of 1813, touching the objects above enumerated, that now remain, are those which relate to naturalization and those which punish the forging, uttering, &c., of certificates of citizenship; all of which are comprised in the 12th and 13th sections of the act. With regard to these

provisions, it would seem that, as the 12th section of the act is a general law, and was intended to apply to all foreigners, (see *ex parte* Paul, 7 Hill, 56; in the matter of Hawley, 1 Daly, 531; 2 Kent Com., 7th ed., p. 28, note *a*; Conkling's treatise, 2d ed., 498,) so the 13th section is a general law, and was intended to cover all cases of forging certificates or evidences of naturalization, and uttering or passing such forged documents, whether the acts are committed by landsmen or seamen, or whether the certificates are given or sold to landsmen or seamen, or are used or intended to be used by one or the other class of persons.

III.

This view of the effect and operation of the 13th section of the act of 1813 coincides with the opinion of the court in the case of The United States *vs.* Randolph, tried before the circuit court of the United States for the western district of Pennsylvania, at its May term, 1853, which opinion was delivered by Judge Irwin. (See Pittsburg Legal Journal, June 4, 1853.) The defendant in that case was indicted on precisely the same charge as the defendant in this case.

"The indictment," observes the court in the case just cited, "it is supposed, cannot be sustained by the 13th section of the act, for that, by looking to its general scope, subject-matter, and title, it must refer to seamen situated as the first eleven sections refer to, and to no other persons; and that, although the words 'if *any*

person shall falsely make, forge,' &c., might be broad enough to include others than seamen, if standing unconnected with the particular subject of legislation, yet, if connected with that subject, they should be so construed as to harmonize with it, without enlarging their meaning beyond the obvious provision of the act; and that to effect this object, nothing more is necessary than to introduce the word 'such' after the word 'any,' at the beginning of the section; and that the word 'such' was probably accidentally omitted in framing the act.

"If this were the only difficulty, the argument, if not conclusive, would be entitled to great weight. But it is proper to give effect to all the material words of one section of a statute, if they can be reconciled with or have an obvious reference to the words or enactment of another section; and whenever this can consistently be done, we are not at liberty to presume that Congress intended to qualify or restrain the only meaning which the words employed naturally and grammatically import. Following this rule, and connecting the 12th and 13th sections of the act, it will be apparent that the words of the 13th section, 'if any person shall make, forge,' &c., are intended to be general in their operation, and not confined to seamen employed in the public and private vessels of the United States.

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IV.

The second and third clauses of section 13 of the act of 1813 punish, respectively, the uttering or passing of *any* "false, forged, or counterfeited certificate of citizenship," and the selling or disposing of *any* "certificate of citizenship," &c.; and it will be observed, that the words "referred to in this act," used in connection with the first clause of that section, are omitted in the second and third clauses, though, perhaps, the latter were not designed to have any broader application than the former.

Now, the "certificate of citizenship" here mentioned is not to be understood as any special or peculiar certificate given to seamen, (such, for instance, as that authorized to be issued by collectors of customs, under the 4th section of the act of May 28, 1796, 1 Stat., 477,) but the ordinary document known as the certificate of naturalization, given upon request to every person who is naturalized by the courts, to attest his citizenship. Certificates of this sort were, by the 3d section of the act of June 18, 1798, (1 Stat., 567,) required to be made and transmitted within a certain period to the Secretary of State by the clerks of courts in all cases of naturalization. The act of April 14, 1802, (2 Stat., 153,) which repealed the act of 1798, omitted this provision, but required a record of the naturalization proceedings to be kept by the clerk. Under both these statutes, the practice was, doubtless, general, at the period of the passage of the

act of 1813, to issue a certified copy of the record of the judgment or act of naturalization to the person naturalized, at his request; and this certified copy is plainly what is referred to in the 2d section of the act of 1813, by the words, "a certified copy of the act by which he shall have been naturalized," &c.

To guard against frauds in naturalization, the statute makes it an offence, not only to forge or falsify a certificate of this character, but to utter or pass as true, in any case, such forged certificate; thus levelling the penalties of the law at the general crime, the frequency of which, it was probably thought, would be much increased by the stringent requirements as to residence in the 12th section of the act. The reference in the 13th section to the certificate mentioned in the 2d section was not intended to describe, define, or narrow the offence, but as a description of the certificate which it was made a crime to forge or falsify, or to utter or pass as true when forged.

Such a certificate may have been obtained by a person not a seaman, and not intending to be one, to be used for quite another purpose than to procure employment on board of an American vessel. It was capable of serving many purposes. But, by the terms of the statute, the *particular purpose* for which the forged or counterfeited certificate has been passed or uttered is not an essential element of the offence, and, therefore, need not be averred. It is the *fact* of passing or uttering the same *as genuine* that constitutes the violation of

the law, and is punished thereby. So that it would seem to be sufficient to set forth such fact, as is done in the indictment in this case, without stating that the forged document was produced to the collector or commander; a circumstance quite immaterial, as the requirement imposed by the 2d section of the act of 1813, respecting the production of certificates of citizenship to those officers, has been virtually taken away by the act of June 28, 1864, already referred to.

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The body of the act of 1813, shows that its title is singularly narrow, and that, besides the "regulation of seamen on board the public and private vessels of the United States," it introduced important additions to the pre-existing naturalization laws. It appears that, after the bill had passed, it was *ordered* that the title be, &c. (Annals of Congress, 1812–'13, p. 1055.) But the title of an act furnishes little aid in the construction of its provisions.

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